

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

ALLSTATE INSURANCE COMPANY, *et al.*,

Plaintiffs,

-against-

MARK MIRVIS, *et al.*,

Defendants.

08-CV-4405 (SLT) (PK)

**AFFIDAVIT OF PETER A.
SMERICK**

STATE OF ALABAMA)

MADISON COUNTY)

PETER A. SMERICK, being duly sworn, deposes and says:

1. I am a Certified Examiner of Questioned Documents and Questioned Photographic Evidence and former Chairman of the Board and Executive Vice-President of the forensic behavioral science firm, Academy Group, Inc. ("AGI").

INTRODUCTION

2. I was retained in this matter to conduct a handwriting examination to determine if the handwriting and/or hand printing appearing on the front and/or backs of certain financial documents, specifically checks and deposit slips, were prepared by certain individuals, to wit:

- a. Was the handwriting/hand printing on the fronts of TD Bank checks and deposit slips for Tatayana Mairvis and Lubov Mirvis accounts ending in -0319 prepared by Mark Mirvis (the "Judgment Debtor") or other writers? (53 checks) (46 deposit slips).
- b. Was the handwriting/hand printing on the fronts of TD Bank checks and deposit slips for Tatayana Mirvis and Alexander Boriskin accounts ending in -8848 that of Mark Mirvis or other writers? (33 checks) (54 deposit slips)

- c. Was the handwriting/hand printing on the front of TD Bank checks on the AT United Corp account ending in -3402 that of Mark Mirvis or other writers? (3 checks)
- d. Was the handwriting/hand printing on the front of Bank of America checks on the CENTRAL PHARMACY BOSTON INC. LILIYA BESPALKO ADM account ending in- 1048 that of Mark Mirvis or other writers? (5 checks)

SUMMARY OF EXPERT OPINIONS

3. The questioned handwriting/hand printing appearing on checks and deposit slips on the previously mentioned accounts (“a” thru “e”), was compared with known handwriting/hand printing exemplars of: Mark Mirvis, Tatayana Mirvis, Lyubov Mirvis, Alexander Boriskin, and Liliya Bespalko with the following results:

a. TD BANK ACCOUNT ENDING WITH THE NUMBERS -0319

- i. It is my opinion that it is HIGHLY PROBABLE that the Judgment Debtor (Mark Mirvis), prepared the writings on 42 of the questioned checks from the account ending in the numbers -0319, it is also PROBABLE that Mark Mirvis prepared 4 additional checks from this account.
- ii. It is my opinion that it is HIGHLY PROBABLE that Tatayana Mirvis prepared one of the checks from account ending in -0319; and it is HIGHLY PROBABLE that Lyubov Mirvis also prepared one check from this account.
- iii. Because of unexplained handwriting variations, NO CONCLUSION could be reached regarding the writer of the remaining checks from account number ending in -0319.

- iv. Because of the absence of a significant number of unique handwriting characteristics, NO CONCLUSIONS could be reached regarding the individual(s) responsible for signing these 53 checks.
- v. It is my opinion that it is PROBABLE that Mark Mirvis prepared the name "Tatayana Mirvis" / "Lybov Mirvis" on 36 of 46 of the deposit slips. NO CONCLUSION could be reached regarding the writer of the remaining deposit slips.

b. TD BANK ACCOUNT ENDING WITH THE NUMBERS -8848

- i. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis prepared the questioned writings on 18 of the checks ending in the account number -8848, and Tatayana Mirvis prepared the writing on 3 of these checks. NO CONCLUSION could be reached regarding the writer of the remaining checks.
- ii. With respect to the deposit slips from the account ending in the number-8848, it is my opinion that Mark Mirvis prepared the name "Tatayana Mirvis" on 34 of 54 of these deposit slips. NO CONCLUSION could be reached regarding the writer of the remaining deposit slips.

c. AT UNITED CORP ACCOUNT ENDING WITH THE NUMBERS -3402

- i. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis prepared the writing on 3 checks of an AT United Corp Account ending with the number -3402. It is my opinion that it is HIGHLY PROBABLE that Alexander Borskin did sign these checks.

**d. CENTRAL PHARMACY BOSTON INC. LILYA BESPALKO ADM ACCOUNT
ENDING WITH THE NUMBERS-1048**

- i. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the first name "Tatayana" on check number 1883 and it is HIGHLY PROBABLE that Liliya Bespalko wrote the remainder of the writing on the check to include the signature.
- ii. It could not be determined (NO CONCLUSION) if Mark Mirvis wrote the first name "Tatayana" on check number 1939 but it is HIGHLY PROBABLE that the remainder of the writing (including the signature) is the writing of Liliya Bespalko.
- iii. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the name "Lybov Mirvis" on check number 3136 but the remainder of the writing (including the signature) is the writing of Liliya Bespalko.
- iv. It could not be determined (NO CONCLUSION) if Mark Mirvis wrote the first name "Tatayana" on check number 3178 but it is HIGHLY PROBABLE that the remainder of the writing (including the signature) is the writing of Liliya Bespalko.
- v. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the name "Lybov Mirvis" on check number 3136 and it is HIGHLY PROBABLE that the remainder of the writing (including the signature) is the writing of Liliya Bespalko.

QUALIFICATIONS

- 4. I received my certification from the Federal Bureau of Investigation (FBI) as an Examiner of Questioned Documents and Examiner of Questioned Photographic Evidence, where,

as indicated below, I was employed as a Special Agent for 24 years. My education includes a Bachelor of Arts degree in Political Science from Pennsylvania State University in 1965 and a Masters of Education Degree in Instructional Technology from the University of Virginia in 1986. I currently hold memberships in the Questioned Documents Section, American Academy of Forensic Sciences, The American College of Forensic Examiners (Diplomat), and Committee E30 on Forensic Sciences (ASTM International).

5. From 1994 until January 2017 was a member of the Academy Group Inc. (AGI) a forensic science/behavioral science consulting firm where I performed, among other things, handwriting analysis and examination of questioned documents. I have testified over a hundred times as an expert witness in federal, state, local, and military civil and criminal matters, including but not limited to as a forensic handwriting examiner.

6. From 1970 until 1976 I was employed as a field office Special Agent for the Federal Bureau of Investigation (FBI). During that time, I specialized in, among other things, the investigation of crimes involving hand writing/hand printing on bank robbery, extortion, kidnapping demand notes, and financial documents such as checks, money orders, stock certificates and bonds.

7. From 1976 until 1985, I was a Supervisory Special Agent assigned to the Special Photographic Unit, Document Section, Laboratory Division, as an Examiner of Questioned Documents and Examiner of Questioned Photographic Evidence. Certification as an expert in these fields required completion of an intensive, comprehensive, two-year training program taught by experienced FBI Laboratory document and photographic examiners. I was also trained by experts employed by the Bureau of Printing & Engraving, the Government Printing Office, the National Bureau of Standards, the Smithsonian Institution and private corporations.

8. From 1985 to 1988 I was assigned to the FBI Laboratory's Forensic Science & Research Training Center, Quantico, Virginia, as an instructor of Forensic Sciences where I provided instruction, regarding among other things, questioned documents and photographic evidence to Law Enforcement Investigators attending the FBI's National Academy, as well as to Questioned Document Examiners from federal, state, and local crime laboratories.

9. From 1988 until 1994, I was assigned as a Violent Crime Analyst/Criminal Profiler for the FBI's National Center for the Analysis of Violent Crime (NCAVC), FBI Academy, Quantico, Virginia, where, based upon my expertise as a Questioned Document/Questioned Photographic Examiner, I was promoted to the program manager for the NCAVC's Threat Assessment and Statement Analysis Sub-Unit and analyzed questioned handwriting and hand printing on documents related to criminal and foreign/domestic terrorism matters.

10. In addition, I conducted "Text Analysis" of questioned documents in an attempt to identify the author of anonymous communications which included my work and analysis on the "Unabomber" case.

11. As a former member of the Academy Group Inc., I conducted, among other things, handwriting/hand printing examinations on behalf of the legal profession, corporations, the law enforcement community and individual clients. Now, in semi-retirement, I continue to conduct handwriting/ hand printing examinations for the above mentioned clients.

12. In total, I have over forty years of experience and education in questioned document examination and investigation of suspect documents. A true and correct copy of my curriculum vitae is attached hereto as Exhibit "A".

**DOCUMENTS REVIEWED & ANALYZED IN
REACHING EXPERT OPINIONS**

13. In connection with my engagement in this matter, I was provided by Plaintiffs' counsel with what I understand to be all of the handwritten checks and deposit slips relating to Subject Accounts that have been produced to Plaintiffs by TD Bank and Bank of America.

14. The foregoing TD Bank records consist of 53 checks and 46 deposit slips for an account ending in the numbers-0319, attached hereto as Exhibit "B"; 33 checks and 54 deposit slips for an account ending in the numbers-8848, attached hereto as Exhibit "C"; and 3 checks for an account ending with the numbers-3402, attached hereto as Exhibit "D". The foregoing Bank of America records consist of 5 checks for an account ending with the numbers-1048, attached hereto as Exhibit "E".

15. Additionally, I examined certain KNOWN standards provided to me. These standards consisted of 48 checks and 4 withdrawal slips for Mark Mirvis, attached hereto as Exhibit "F"; 6 checks, 1 First Republic Bank Consumer Master Signature Card, and 1 HSBC Master Deposit Agreement for Tatayana Mirvis, attached hereto as Exhibit "G"; 2 checks and 2 TD Bank New Personal Account forms for Lyubov Mirvis, attached hereto as Exhibit "H"; 10 checks and 1 First Republic Bank Consumer Master Signature Card for Alexander Boriskin, attached hereto as Exhibit "I"; and 13 checks for Liliya Bespalko, attached hereto as Exhibit "J".

DISCUSSION AND ANALYSIS

16. The purpose of my examination and inter-comparison of the above mentioned documents was outlined in paragraph 2, points "a" thru "e" in my Affidavit.

17. My opinions are expressed in accordance with the Nine Point Scale terminology that is standardized in Designation E 1658-04 of the American Society for Testing and Measurement ("ASTM")

18. In the center of the Nine Point Scale is the INCONCLUSIVE (NO CONCLUSION) conclusion, and the scale progresses to either end of the continuum depending on whether the opinion IDENTIFIES or EXCLUDES a particular writer. The points of the continuum can be explained as follows:

- * INCONCLUSIVE (NO CONCLUSION): The examiner has no opinion regarding the source of the writing because of limitations in either the quantity or quality of the evidence, or the lack of individualizing characteristics in the evidence.
- * INDICATIONS: A body of writing has very few characteristics or features which are significant to definite conclusions.
- * PROBABLE: The characteristics and features of the questioned writing strongly point toward common authorship, or lack thereof depending upon which side of the continuum they occur.
- * HIGHLY PROBABLE: There is virtual certainty that the questioned and known writings share or lack common authorship. Some characteristic or feature is missing to absolutely identify or exclude a potential author.
- * IDENTIFICATION or EXCLUSION: Representing the most definitive conclusions in an expert opinion, the evidence supports without reservation either common authorship between the known and questioned writings or the exclusion of a writer from the population of potential contributors.

(NOTE: reaching a conclusion of IDENTIFICATION or EXCLUSION normally requires the availability of original evidence.)

19. Based upon a degree of professional certainty, the standards provided, and my experience and knowledge as a FBI Certified Examiner of Questioned Documents that:

a. ACCOUNT ENDING WITH THE NUMBERS -0319

- i. It is my opinion that it is HIGHLY PROBABLE that the Judgment Debtor (Mark Mirvis) prepared the questioned writings on the front of checks numbered: 101-123, 125-129, 133, 134, 136-138, 140-143, 145, 147, 153- 155.

- ii. It is my opinion that it is PROBABLE that the Judgment Debtor (Mark Mirvis) prepared the questioned writings on the front of checks numbered: 150, 152, 156, and 158.
- iii. It is my opinion that it is HIGHLY PROBABLE that Tatayana Mirvis prepared the questioned writing on the front of check number 131.
- iv. It is my opinion that it is HIGHLY PROBABLE that Lyubov Mirvis prepared the questioned writing on the front of check number 144.
- v. NO CONCLUSION was reached regarding the writer of the remaining checks.
- vi. It is my opinion that it is PROBABLE that Mark Mirvis prepared the name of “Tatayana Mirvis”/”Lyubov Mirvis” on 36 deposit slips bearing the dates: 11/12/13, 1/6/14, 1/31/14, 1/28/14, 2/3/14, 2/4/14, 2/10/14, 2/11/4, 2/14/14, 3/7/14, 2/8/14, 03/17/14, 3/19/14, 4/9/14, 4/11/14, 4/14/14, 4/25/14, 4/29/14, 5/18/14, 6/2/14, 6/4/14, 6/6/14, 6/3/14, 7/1/14, 8/8/14, 8/11/14, 8/18/14, 8/26/14, 11/4/14, 1/5/15, 3/11/15, 3/25/15, 4/28/15, 5/26/15, 6/2/15, and 10/7/15.

b. ACCOUNT ENDING WITH THE NUMBERS -8848

- i. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis prepared the front of the checks numbered: 0098, 101-109, 112, 113, 115, 119, 124, and 127-129.
- ii. It is my opinion that it is HIGHLY PROBABLE that Tatayana Mirvis prepared the front of checks numbered 111,125, and 133.
- iii. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis prepared the name “Tatayana Mirvis” on 34 deposit slips dated: 12/20/14, 12/30/14,

1/26/15, 5/15/15, 6/17/15, 7/6/15, 7/11/15, 8/10/15, 8/13/15, 8/18/15,
9/22/15, 10/8/15, 10/16/15, 11/8/15, 11/15/5, 12/8/15, 11/18/15, 12/22/15,
1/4/16, 1/8/16, 1/11/2016, 1/12/16, 01/14/15, 1/20/16, 1/18/16, 2/4/16,
2/8/16, 2/18/16, 2/25/16, 3/22/16, 3/31/16, 4/12/16, 4/13/16, and 4/22/16.

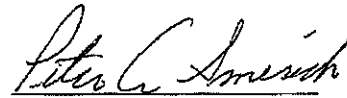
c. AT UNITED CORP ACCOUNT ENDING WITH THE NUMBERS -3402

- i. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the fronts of checks numbered 1157, 0100, and 1151. However, it is PROBABLE that these checks were signed by Alexander Boriskin.

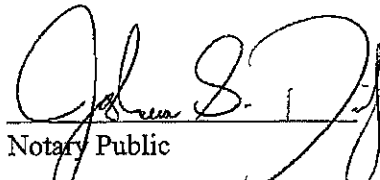
d. CENTRAL PHARMACY BOSTON INC. LILYA BESPALKO ADM ACCOUNT ENDING WITH THE NUMBERS-1048

- i. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the first name "Tatayana" on the front of check number 1883. It is HIGHLY PROBABLE that the remainder of the writing (including the signature) is the writing of Liliya Bespalko.
- ii. It is my opinion, because of unexplained hand printing characteristics, that it could not be determined (NO CONCLUSION) who printed the name "Tatayana" on check number 1939. However, it is HIGHLY PROBABLE that the remainder of the writing on the check (including the signature) is the writing of Liliya Bespalko.
- iii. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the name "Lybov Murvis" on check number 3136 and it is HIGHLY PROBABLE that the remainder of the writing (including the signature) is the writing of Liliya Bespalko.

- iv. It is my opinion, because of unexplained hand printing characteristics, it could not be determined (NO CONCLUSION) who hand printed the name "Tatayana" on check number 3178. However, it is HIGHLY PROBABLE that the remainder of the writing (including the signature) is the writing of Liliya Bespalko.
- v. It is my opinion that it is HIGHLY PROBABLE that Mark Mirvis wrote the name "Lybov Mirvis" on check number 3136. It is my opinion that it is HIGHLY PROBABLE that the remainder of the writing on the front of the check (including the signature) is the writing of Liliya Bespalko.


Peter A. Smerick

Sworn to before me this
15th day of November, 2017


Notary Public

